

BEFORE THE
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS, AND GEOLOGISTS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation against:

ANDREW BARMAKIAN

13241 Harness Drive

Rancho Cucamonga, CA 91739

Civil Engineer License No. C 12387,

Respondent.

Case No. 966-A

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers, Land Surveyors, and Geologists as its Decision in the above-entitled matter.

This Decision shall become effective on June 17, 2011.

IT IS SO ORDERED May 12, 2011.

Original Signed

BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS, AND GEOLOGISTS
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GEOFFREY WARD
Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
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Attorneys for Complainant
7

8 **BEFORE THE**
BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS,
AND GEOLOGISTS
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation Against:

Case No. 966-A

12 **ANDREW BARMAKIAN**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 **13241 Harness Drive**
Rancho Cucamonga, CA 91739

14 **Civil Engineer License No. C 12387**

15 Respondent.
16

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Joanne Arnold (Complainant) is the Acting Executive Officer of the Board for
22 Professional Engineers, Land Surveyors, and Geologists. She brought this action solely in her
23 official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the
24 State of California, by Geoffrey Ward, Deputy Attorney General.

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1 2. Respondent Andrew Barmakian (Respondent) is represented in this proceeding by
2 attorney Stephen P. Janis, whose address is:

3 Stephen P. Janis, Esq.
4 Banks, Garcia & Janis
5 Civic Center Law Offices
6 10788 Civic Center Dr.
7 Rancho Cucamonga, CA 91730-3805

8 3. On or about July 21, 1960, the Board for Professional Engineers, Land Surveyors,
9 and Geologists issued Civil Engineer License No. C 12387 to Respondent. The Civil Engineer
10 License was in full force and effect at all times relevant to the charges brought in Accusation No.
11 966-A and will expire on March 31, 2011, unless renewed.

12 JURISDICTION

13 4. Accusation No. 966-A was filed before the Board for Professional Engineers, Land
14 Surveyors, and Geologists (Board) , Department of Consumer Affairs, and is currently pending
15 against Respondent. The Accusation and all other statutorily required documents were properly
16 served on Respondent on February 16, 2011. Respondent timely filed his Notice of Defense
17 contesting the Accusation. A copy of Accusation No. 966-A is attached as exhibit A and
18 incorporated herein by reference.

19 ADVISEMENT AND WAIVERS

20 5. Respondent has carefully read, fully discussed with counsel, and understands the
21 charges and allegations in Accusation No. 966-A. Respondent has also carefully read, fully
22 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
23 Order.

24 6. Respondent is fully aware of his legal rights in this matter, including the right to a
25 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
26 his own expense; the right to confront and cross-examine the witnesses against him; the right to
27 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
28 the attendance of witnesses and the production of documents; the right to reconsideration and
court review of an adverse decision; and all other rights accorded by the California
Administrative Procedure Act and other applicable laws.

1 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
2 every right set forth above.

3 CULPABILITY

4 8. Respondent admits the truth of each and every charge and allegation in Accusation
5 No. 966-A.

6 9. Respondent agrees that his Civil Engineer License is subject to discipline and he
7 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
8 below.

9 CIRCUMSTANCES IN MITIGATION

10 10. Respondent Andrew Barmakian has never been the subject of any disciplinary action.
11 He has admitted responsibility at an early stage in the proceedings.

12 CONTINGENCY

13 11. This stipulation shall be subject to approval by the Board for Professional Engineers,
14 Land Surveyors, and Geologists. Respondent understands and agrees that counsel for
15 Complainant and the staff of the Board for Professional Engineers, Land Surveyors, and
16 Geologists may communicate directly with the Board regarding this stipulation and settlement,
17 without notice to or participation by Respondent or his counsel. By signing the stipulation,
18 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
19 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
20 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of
21 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
22 the parties, and the Board shall not be disqualified from further action by having considered this
23 matter.

24 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
25 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
26 effect as the originals.

27 13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
28 integrated writing representing the complete, final, and exclusive embodiment of their agreement.

1 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
2 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
3 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
4 writing executed by an authorized representative of each of the parties.

5 14. In consideration of the foregoing admissions and stipulations, the parties agree that
6 the Board may, without further notice or formal proceeding, issue and enter the following
7 Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Civil Engineer License No. C 12387 issued to Respondent
10 Andrew Barmakian is revoked. However, the revocation is stayed and Respondent is placed on
11 probation for a period equal to the remainder of his criminal probation in the case *United States v.*
12 *Andrew Barmakian* (Case No. 2:08CR00197-001 in the United States District Court, Eastern
13 District of Virginia) or five years, whichever is greater, on the following terms and conditions.

14 1. **Actual Suspension.** Civil Engineer License No. C 12387 issued to Andrew
15 Barmakian is suspended for 90 days beginning on the effective date of the decision.

16 2. **Coursework on Engineering Ethics.** Within four years of the effective date of the
17 decision, Respondent shall successfully complete and pass the course "Advanced Studies in
18 Engineering Ethics" as offered through correspondence by the Murdough Center for Engineering
19 Professionalism, Texas Tech University. Respondent may select an equivalent professional ethics
20 course; however, any alternative professional ethics course must be approved in advance by the
21 Board or its designee. Respondent must provide the Board with verifiable proof of his successful
22 completion of the professional ethics course.

23 3. **Cost Recovery.** The Respondent is hereby ordered to reimburse the Board the
24 amount of \$ 812.50 within four years from the effective date of this decision for its investigative
25 and prosecution costs up to the date the settlement offer is agreed to by both parties. This
26 reimbursement may be paid in installments.

27 4. **Submit Quarterly and Special Reports.** Within thirty days of the effective date of
28 the decision, and then continuing on a quarterly basis for the remainder of the probationary

1 period, or until he is released from criminal probation, whichever occurs first, Respondent must
2 submit verifiable proof to the Board that he is compliance with his criminal probation, including a
3 report from his criminal probation officer. In addition to these quarterly reports, Respondent shall
4 submit such special reports as the Board may require.

5 **5. Examination.** Within 60 days of the effective date of the decision, the Respondent
6 shall successfully complete and pass the California Laws and Board Rules examination, as
7 administered by the Board.

8 **6. Notification.** Within 30 days of the effective date of the decision, the Respondent
9 shall provide the Board with evidence that he has provided all persons or entities with whom he
10 has a contractual or employment relationship such that the relationship is in the area of practice of
11 professional engineering and/or professional land surveying in which the violation occurred with
12 a copy of the decision and order of the Board and shall provide the Board with the name and
13 business address of each person or entity required to be so notified. During the period of
14 probation, the Respondent may be required to provide the same notification of each new person
15 or entity with whom he has a contractual or employment relationship such that the relationship is
16 in the area of practice of professional engineering and/or land surveying in which the violation
17 occurred and shall report to the Board the name and address of each person or entity so notified.

18 **7. Obey All Laws.** The Respondent shall obey all federal, state, and local laws and
19 regulations related to the practices of professional engineering and professional land surveying.

20 **8. Tolling of Probation.** The period of probation shall be tolled during the time the
21 Respondent is practicing exclusively outside the state of California. If, during the period of
22 probation, the Respondent practices exclusively outside the state of California, the Respondent
23 shall immediately notify the Board in writing.

24 **9. Violation of Probation.** If the Respondent violates the probationary conditions in
25 any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may
26 vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of
27 probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter
28 has been submitted to the Office of the Attorney General for the filing of such, the Board shall

1 have continuing jurisdiction until all matters are final, and the period of probation shall be
2 extended until all matters are final.

3 10. **Completion of Probation.** Upon successful completion of all of the probationary
4 conditions and the expiration of the period of probation, Respondent's Civil Engineer License,
5 No. 12387 shall be unconditionally restored.

6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with my attorney, Stephen P. Janis. I understand the stipulation and the effect it will
9 have on my Civil Engineer License. I enter into this Stipulated Settlement and Disciplinary Order
10 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
11 Board for Professional Engineers, Land Surveyors, and Geologists.

12
13 DATED:

3-17-11

Original Signed

ANDREW BARMAKIAN
Respondent

14
15
16 I have read and fully discussed with Respondent Andrew Barmakian the terms and
17 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
18 I approve its form and content.

19
20 DATED:

3/17/2011

Original Signed

Stephen P. Janis
Attorney for Respondent

1 ENDORSEMENT

2 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
3 submitted for consideration by the Board for Professional Engineers, Land Surveyors, and
4 Geologists of the Department of Consumer Affairs.

5 Dated: March 18, 2011

6 Respectfully submitted,

7 KAMALA D. HARRIS
8 Attorney General of California
9 KAREN B. CHAPPELLE
10 Supervising Deputy Attorney General

11 *Original Signed*

12 GEOFFREY WARD
13 Deputy Attorney General
14 *Attorneys for Complainant*

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Exhibit A

Accusation No. 966-A

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN CHAPPELLE
Supervising Deputy Attorney General
3 GEOFFREY WARD
Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
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6 Facsimile: (213) 897-2804
Attorneys for Complainant

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9 **AND GEOLOGISTS**
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11 In the Matter of the Accusation Against:

Case No. 966-A

12 **ANDREW BARMAKIAN**

13 **13241 Harness Drive**
14 **Rancho Cucamonga, CA 91739**

A C C U S A T I O N

15 **Civil Engineer License No. C 12387**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Joanne Arnold ("Complainant") brings this Accusation solely in her official capacity
21 as the Acting Executive Officer of the Board for Professional Engineers, Land Surveyors, and
22 Geologists, Department of Consumer Affairs.

23 2. On or about July 21, 1960, the Board issued Civil Engineer License Number C 12387
24 to Andrew Barmakian ("Respondent"). His Civil Engineer License will expire on March 31,
25 2011, unless renewed.

26 **JURISDICTION AND STATUTORY AND REGULATORY PROVISIONS**

27 3. This Accusation is brought before the Board under the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

1 4. Sections 118 subdivision (b) of the Code also grants the Board jurisdiction over
2 suspended, expired, forfeited, cancelled, or surrendered licenses:

3 "The suspension, expiration, or forfeiture by operation of law of a license
4 issued by a board in the department, or its suspension, forfeiture, or cancellation by
5 order of the board or by order of a court of law, or its surrender without the written
6 consent of the board, shall not, during any period in which it may be renewed,
7 restored, reissued, or reinstated, deprive the board of its authority to institute or
8 continue a disciplinary proceeding against the licensee upon any ground provided
9 by law or to enter an order suspending or revoking the license or otherwise taking
10 disciplinary action against the licensee on any such ground."

11 5. Section 490 of the Code provides:

12 "(a) In addition to any other action that a board is permitted to take
13 against a licensee, a board may suspend or revoke a license on the ground that the
14 licensee has been convicted of a crime, if the crime is substantially related to the
15 qualifications, functions, or duties of the business or profession for which the license
16 was issued.

17 (b) Notwithstanding any other provision of law, a board may exercise any
18 authority to discipline a licensee for conviction of a crime that is independent of the
19 authority granted under subdivision (a) only if the crime is substantially related to the
20 qualifications, functions, or duties of the business or profession for which the
21 licensee's license was issued.

22 (c) A conviction within the meaning of this section means a plea or
23 verdict of guilty or a conviction following a plea of nolo contendere. Any action that
24 a board is permitted to take following the establishment of a conviction may be taken
25 when the time for appeal has elapsed, or the judgment of conviction has been
26 affirmed on appeal, or when an order granting probation is made suspending the
27 imposition of sentence, irrespective of a subsequent order under the provisions of
28 Section 1203.4 of the Penal Code.

 (d) The Legislature hereby finds and declares that the application of this
section has been made unclear by the holding in *Petropoulos v. Department of Real
Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
significant number of statutes and regulations in question, resulting in potential harm
to the consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session
do not constitute a change to, but rather are declaratory of, existing law."

1 6. Section 6775 of the Code provides, in pertinent part,

2 "[T]he [B]oard may reprove, suspend for a period not to exceed two
3 years, or revoke the certificate of any professional engineer registered under this
4 chapter:

5 ...

6 (a) Who has been convicted of a crime substantially related to the
7 qualifications, functions and duties of a registered professional engineer, in which

1 case the certified record of conviction shall be conclusive evidence thereof.

2 (b) Who has been found guilty by the board of any deceit,
3 misrepresentation, or fraud in his or her practice."

4 7. California Code of Regulations, Title 16, section 416 provides criteria for
5 determining when a crime or act is substantially related to the practice of engineering:

6 "For the purpose of denial, suspension, or revocation of the license of a
7 professional engineer or a land surveyor pursuant to Division 1.5 (commencing with
8 Section 475) of the Business and Professions Code, a crime or act shall be considered
9 substantially related to the qualifications, functions, and duties of a professional
10 engineer or land surveyor if, to a substantial degree, it evidences present or potential
11 unfitness of a professional engineer or land surveyor to perform the functions
12 authorized by his or her license in a manner consistent with the public health, safety,
13 or welfare. Such crimes or acts shall include, but not be limited to, those involving the
14 following:

15 (a) For professional engineers, any violations of the provisions of the
16 Professional Engineers Act or aiding and abetting any person in such a violation;

17 (b) For land surveyors, any violations of the provisions of the
18 Professional Land Surveyors' Act or aiding and abetting any person in such a
19 violation;

20 (c) A conviction of a crime arising from or in connection with the practice
21 of professional engineering or land surveying."

22 COST RECOVERY

23 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

27 FIRST CAUSE FOR DISCIPLINE

28 (Conviction of a Substantially Related Crime)

9. Respondent is subject to disciplinary action under sections 6775 and 490 of the Code,
in conjunction with section 416 of the California Code of Regulations, in that on or about April 3,
2009, in a criminal proceeding entitled, *United States of America vs. Andrew Barmakian*, in the
United States District Court, Eastern District of Virginia, Case No. 2:08cr197, Respondent pled
guilty and was convicted of violating Title 15, United States Code, section 1 (Conspiracy to
Restrain Trade), a felony and crime substantially related to the qualifications, functions, and
duties of a civil engineer. The circumstances are as follows:

1 a. Beginning in or about December 2000 and continuing until in or about May 2003, the
2 Respondent and co-conspirators entered into and engaged in a combination and conspiracy to
3 suppress and eliminate competition by allocating customers and rigging bids for contracts of
4 plastic marine pilings in the United States and elsewhere. The combination and conspiracy
5 engaged in by the Respondent and co-conspirators was in unreasonable restraint of interstate and
6 foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

7 b. The charged combination and conspiracy consisted of a continuing agreement,
8 understanding, and concert of action among the Respondent and co-conspirators, the substantial
9 terms of which were to allocate customers and rig bids for contracts of plastic marine pilings in
10 the United States and elsewhere. The victims of this conspiracy included the Department of
11 Defense, including the U.S. Navy, as well as private companies.

12 **PRAYER**

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board issue a decision:

- 15 1. Revoking or suspending Civil Engineer License Number C-12387, issued to Andrew
16 Barmakian.
- 17 2. Ordering Andrew Barmakian to pay the Board the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Code section 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.
- 20

21 DATED: 1-21-11

Original Signed

22 JOANNE ARNOLD
23 Acting Executive Officer
24 Board for Professional Engineers, Land Surveyors, and
25 Geologists
26 State of California
27 Complainant

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